

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

GERALD WINEMAN,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	CASE NO.: 19-cv-01436-SGC
	)	
CITY OF JACKSONVILLE,	)	
	)	
DEFENDANT.	)	

**REPLY**  
**ON DEFENDANT’S MOTION FOR RECONSIDERATION**  
**ON SUMMARY JUDGMENT AS TO PARTICULAR ARGUMENTS**

In reply to Plaintiff’s Opposition to Defendant’s Motion for Reconsideration, Defendant briefly sums up its arguments as follows:

1. Neither the plaintiff’s brief in opposition to summary judgment, nor the Court’s memorandum opinion, nor the plaintiff’s brief opposing reconsideration, sufficiently address the independent decision-making role of the Civil Service Board of the City of Jacksonville. This matters because the Board made two decisions by which liability is attached to the City, to-wit:

- The decision to hire from outside the City; and
- The decision to deem Wood as qualified.

2. Therefore, the plaintiff has to show intentional discrimination also by the Board, or that it was a “cat’s-paw” situation.<sup>1</sup> Plaintiff has not done this.

3. Neither the plaintiff’s brief in opposition to summary judgment, nor the Court’s memorandum opinion, nor the plaintiff’s brief opposing reconsideration, sufficiently address the status of the police chief nominating committee, which recommended the successful candidate to the city council. This matters because the committee’s decision against plaintiff caused him to not get the job.

4. Plaintiff has to show a majority of the committee members discriminated against him because of his age.<sup>2</sup> He has offered pretext evidence as to the two council members on the committee. He has offered none about the other three. Based on the law previously cited to the Court, this is insufficient to show causation. Therefore, plaintiff’s argument fails.

5. As to plaintiff’s objection to the assertion that Wineman was ranked third by the committee, it is based on the City’s EEOC

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<sup>1</sup> Defendant previously cited Stimpson v. City of Tuscaloosa, 186 F.3d 1328 (11<sup>th</sup> Cir. 1999), where the Eleventh Circuit reversed on a similar lack of causation argument.

<sup>2</sup> Defendant has previously cited Eleventh Circuit holdings in its initial brief at 41-45 and reply brief at 8-11.

response, the preparation of which the city administrator (and selection committee member) was involved.<sup>3</sup>

### **CONCLUSION**

Based on the above and foregoing, this Honorable Court should VACATE its Memorandum Opinion and GRANT summary judgment to the City of Jacksonville.

s/H. Edgar Howard

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<sup>3</sup> As plaintiff notes, she testified she wrote it. The chart on page 18 of plaintiff's opposition brief was cited merely to show the age of second-ranked applicant Allen George.

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing on the following parties hereto by filing it with the Court's electronic filing system.

This the 12<sup>th</sup> day of October, 2021.

s/H. Edgar Howard  
Of Counsel

cc Jon C. Goldfarb, Esquire  
Christina Malmat, Esquire  
L. William Smith, Esquire  
Lieselotte Carmen-Burks, Esquire